



Introduction



The Department of Housing and Urban Development's Role in Fair Housing Enforcement, Highlighting Issues of Concern

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www.hud.gov/fairhousing



Introduction (cont.)



1. HUD's Role

- a. Background
- b. The Office of Fair Housing and Equal Opportunity
- c. The Office of Systemic Investigations

2. The Fair Housing Act

- a. The Law
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- c. Disparate Impact
- d. Maternity Leave
- e. Redlining cases





Part 1: HUD's Office of Fair Housing and Equal Opportunity



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About FHEO



Our Mission: To create equal housing opportunities for all persons living in America by administering laws that prohibit discrimination in housing on the basis of race, color, religion, sex, national origin, disability, and familial status.

- FHEO administers two funded programs:
 - The Fair Housing Assistance Program
 - The Fair Housing Initiatives Program





About FHEO (cont.)



- Review and comment on Departmental clearances of proposed rules, handbooks, legislation, draft reports, and NOFA for fair housing and other civil rights considerations;
- Ensure civil rights compliance in HUD funded programs through compliance reviews and “front end” compliance activities
- Provide technical assistance to HUD program offices, HUD funded programs, including local housing authorities and community development agencies, etc.
- Work with private industry, fair-housing and community advocates on the promotion of voluntary fair housing compliance.
- Investigate complaints of housing discrimination





About the Office of Systemic Investigations



- A team of economists, geographers, seasoned investigators and trial attorneys that provide technical assistance on HUD's most challenging and complex cases.
- Initiate and investigate fair lending, insurance discrimination, design and construction, and zoning cases.
- Cases driven by data.





About the Office of Systemic Investigations (cont.)



- Complaint based work
 - The vast majority of our work.
- Secretary-Initiated cases
 - HUD has authority to bring complaints in its own name to address violations of the Fair Housing Act.
- Often cases that become “pattern and practice” referrals to the Department of Justice.





About the Office of Systemic Investigations (cont.)

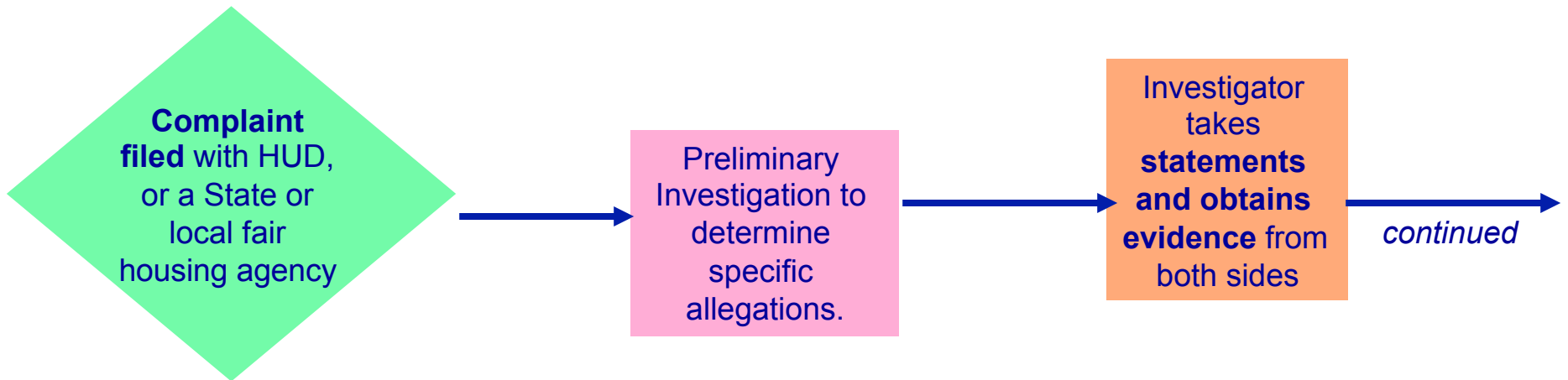


- Some types of the cases currently before this office:
 - Discriminatory lending underwriting criteria
 - Discriminatory insurance underwriting criteria
 - Design and Construction
 - Refusals to rent to families with children due to safety concerns
 - Independent living requirements



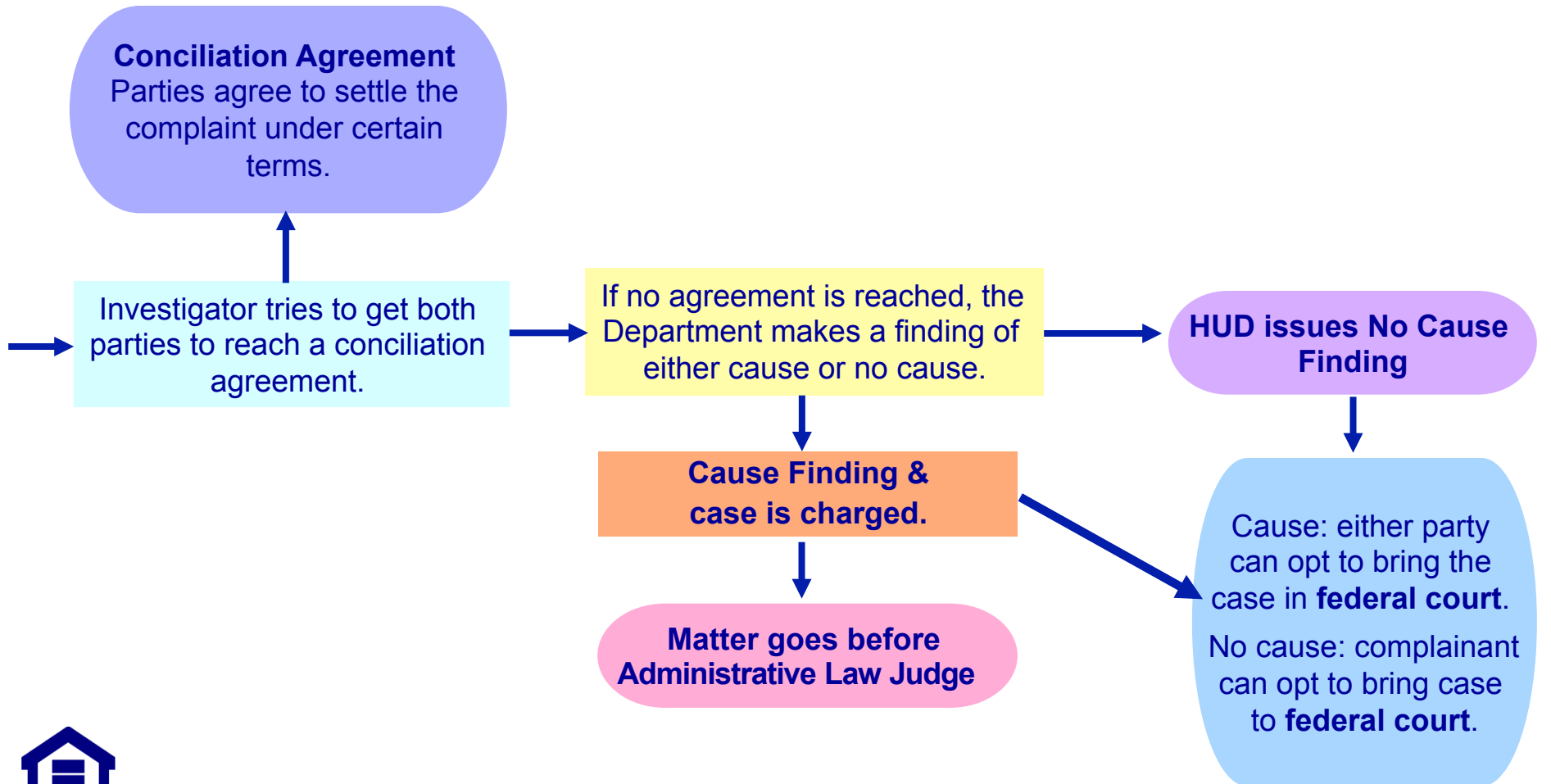


Fair Housing Complaint Process





Fair Housing Complaint Process





Bases of Complaints (HUD & FHAPs)



Basis	FY 2013	
	Number of Complaints	% of Total
Disability	4,429	53%
Race	2,337	28%
Familial Status	1,149	14%
National Origin	1,040	12%
<i>National Origin- Hispanic or Latino</i>	629	8%
Sex	985	12%
Retaliation	928	11%
Religion	220	3%
Color	170	2%
Number of Complaints Filed	8,368	

Source: TEAPOTS

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Top Complaints (HUD & FHAPs)



Issue	FY 2013	
	Number of Complaints	% of Total
Discriminatory Terms, Conditions, Privileges, Services, and Facilities in the Rental or Sale of Property § 804(b) and § 804(f)(2)	5,713	68%
Failure to Make a Reasonable Accommodation § 804(f)(3)(B)	2,543	30%
Refusal to Rent § 804(a) and § 804(f)(1)	2,273	27%
Coercion or Intimidation, Threats, Interference, and Retaliation § 818	1,884	23%
Discriminatory Notices, Statements, or Advertisements § 804(c)	986	12%
Discriminatory Financing § 805(a)	433	5%





The Numbers



Completed Title VIII Cases - FY2015			
		Total	
		#	%
HUD/ FHAP	Case Completion Type		
HUD	Administrative Closure	252	15.3%
HUD	Charged (HUD)	27	1.6%
HUD	Conciliated	508	30.9%
HUD	DOJ Closure	17	1.0%
HUD	No Cause	649	39.5%
HUD	Withdrawn with Resolution	190	11.6%
HUD	Total	1,643	100.0%





Part 2: The Fair Housing Act



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Fair Housing Laws



- **Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, amended in 1988)**
- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Section 109 of Title I of the Housing and Community Development Act of 1974
- Title II of the Americans with Disabilities Act of 1990
- Architectural Barriers Act of 1968
- Age Discrimination Act of 1975
- Executive Orders





The Fair Housing Act



The Fair Housing Act prohibits discrimination on the basis of:

- Race
- Color
- Religion
- National Origin
- Sex
- Familial Status
- Disability





What is Housing Discrimination?



Usually, Fair Housing Act violations concern the sale or rental of housing, it is illegal to take any of the following actions on a prohibited basis:

- Refusal to sell, rent, or show available housing
- Advertise or make any statement expressing a limitation or preference: “no kids” or “adults only”
- Harassment, intimidation or interference in the exercise of fair housing rights
- Intrusive questions regarding a disability
- Higher rent, security deposit, or different terms for different tenants
- Refusal to make a reasonable accommodation or modification
- Being steered into a segregated neighborhood





Fair Lending



- Refusal to make a mortgage loan
- Refusal to provide information regarding loans
- Imposition of different terms or conditions on a loan, such as different interest rates, points, or fees
- Discrimination in the appraisal of property
- Predatory lending: Targeting communities for loans with unfavorable terms based on a protected class, race or national origins, typically.
- Refusal to consider a loan applicant's salary during periods of maternity or paternity leave.





Fair Lending (cont.)



- Some relevant portions of the Fair Housing Act prohibit actions, policies, and decisions that:
 - deny or otherwise render unavailable “real estate related transactions”
 - offer “real estate related transactions” on different terms and conditions
 - otherwise “interfere” with the availability of housing or enjoyment of one’s fair housing rights
 - Make or publish any notice, statement, or advertisement for housing that indicates any preference, limitation, or discrimination





Fair Lending (cont.)



Federal regulations describe the following Fair Housing Act violations:

- Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for [housing] because of [protected class status].





Disparate Impact -- Discriminatory Effects



- Since the 1970s, courts have consistently recognized that facially-neutral policies and practices that unnecessarily limit housing opportunities or otherwise perpetuate segregation can violate the *Fair Housing Act*.
- In 2013, HUD formalized the discriminatory effects standard through a rule-making process.





HUD's Rule



§ 100.500 Discriminatory effect prohibited. Liability may be established under the Fair Housing Act based on a practice's discriminatory effect, as defined in paragraph (a) of this section, even if the practice was not motivated by a discriminatory intent.

The practice may still be lawful if supported by a legally sufficient justification, as defined in paragraph (b) of this section. The burdens of proof for establishing a violation under this subpart are set forth in paragraph (c) of this section.





HUD's Rule



100.500(a) *Discriminatory effect.* A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.





HUD's Rule



100.500(b) *Legally sufficient justification.*

(1) A legally sufficient justification exists where the challenged practice:

- (i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and
- (ii) Those interests could not be served by another practice that has a less discriminatory effect.





HUD's Rule



100.500(b)(2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative. The burdens of proof for establishing each of the two elements of a legally sufficient justification are set forth in paragraphs (c)(2) and (c)(3) of this section.





HUD's Rule



100.500(c) *Burdens of proof in discriminatory effects cases.*

- (1) The charging party . . . has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.
- (2) Once the charging party or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.





HUD's Rule



100.500(c)(3) If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.





The Supreme Court Affirms



- On June 25, 2015, the Supreme Court, by a 5-4 margin, upheld the application of the discriminatory effects theory of liability under the Fair Housing Act (“FHA”) in *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.* (No. 13–1371)
- The Majority affirmed the Fifth Circuit Court of Appeals, holding that the *Fair Housing Act* not only prohibits intentional acts of discrimination, but also housing practices that have an unjustified discriminatory effect.
- In preserving the discriminatory effects standard – also known as “disparate impact” – the Court upheld four decades of judicial precedent from 11 appellate courts across the country.





Part 3: Recent Cases



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Maternity Lending Discrimination



- It is still a problem
- It is not that hard
- It is expensive
-and I am still seeing these complaints all the time





\$5 Million Settlement With Wells Fargo



- \$165,000 among six families in different states
- Up to 250 claimants will get \$20,000 each. Additional claimants will get a prorated share
- Complaints included:
 - making loans unavailable based on sex and familial status
 - forcing women applicants to sacrifice their maternity leave and return to work prior to closing on their loan
 - by making discriminatory statements to and against women who were pregnant or who had recently given birth





HUD's Focus on Maternity Leave-Related Lending Discrimination



- Prior to the Wells Fargo case and since 2010:
 - 190 maternity leave discrimination complaints have been filed with HUD
 - More than 40 settlements amounting to ~ \$1.5 million
 - Settlements with Bank of America, Cornerstone Bank, and the Mortgage Guarantee Insurance Corporation (MGIC)





Maternity Leave: Bases for Violation



- Sex
 - Pregnancy
- Familial Status
 - Pregnancy
 - Securing legal custody of person under 18
 - Maternity or paternity leave status
- Disability
 - Medical complications related to pregnancy





Maternity Leave: Violations



- Discriminatory Statements
 - Lender says it cannot approve or close the loan due to maternity leave status
 - Lender says it cannot use maternity leave related income to underwrite the loan
- Different Terms and Conditions
 - Lender requires loan applicant to provide a written explanation of their plans for additional children over the next 3 years
 - Lender requires loan applicants to report to work before it will close on the loan





Redlining



- Redlining (lending discrimination against residents of certain neighborhoods) remains a problem
- This year alone, 3 significant redlining settlements
 - Associated Bank / HUD
 - Chicago, Milwaukee, Minneapolis, Lake County, Racine MSAs
 - Hudson City Savings Bank / CFPB-DOJ
 - New York, Philadelphia, Bridgeport MSAs
 - Evans Bancorp / NY AG
 - Buffalo





\$15 million settlement with Associated Bank



Terms of HUD's settlement with Associated Bank

- Open four loan production offices in majority-minority census tracts (three in the Chicago area and one in the Milwaukee area)
- \$15 million for loan subsidies, home repair grants, affirmative marketing, education and training
- \$195 million in subsidized mortgages
- At the time, largest redlining settlement ever.



Associated Bank Case

In Chicago, for every 10,000 loans other lenders made in the same neighborhood:

- Associated made 42 loans in mainly-white (<10% minority) neighborhoods,.
- Associated made only 16 loans in majority-minority neighborhoods.
- Associated made only 4 loans in 80%+ minority tracts.

Chicago Metro Area: Associated Bank Market Share by Minority Population

Minority Population in Tract (%)	Associated Loans	All Lenders Loans	Associated Market Share	Associated Share as a % of < 10% Tracts
Less than 10%	1,243	298,793	0.42%	100%
10 - 50%	1,058	400,158	0.26% ***	64%
50% or more	156	98,475	0.16% ***	38%

Source: 2008-2011 HMDA data, 2005-2009 ACS data from Table 1A.

Note: * = statistically significant at the 10% level; ** = 5%; *** = 1%.

Lake & Kenosha Counties: Associated Bank Market Share by Minority Population

Minority Population in Tract (%)	Associated Loans	All Lenders Loans	Associated Market Share	Associated Share as a % of < 10% Tracts
Less than 10%	640	65,490	0.98%	100%
10 - 50%	224	37,776	0.59% ***	61%
50% or more	21	5,012	0.42% ***	43%

Source: 2008-2011 HMDA data, 2005-2009 ACS data from Table 1A.

Note: * = statistically significant at the 10% level; ** = 5%; *** = 1%.

Milwaukee Metro Area: Associated Bank Market Share by Minority Population

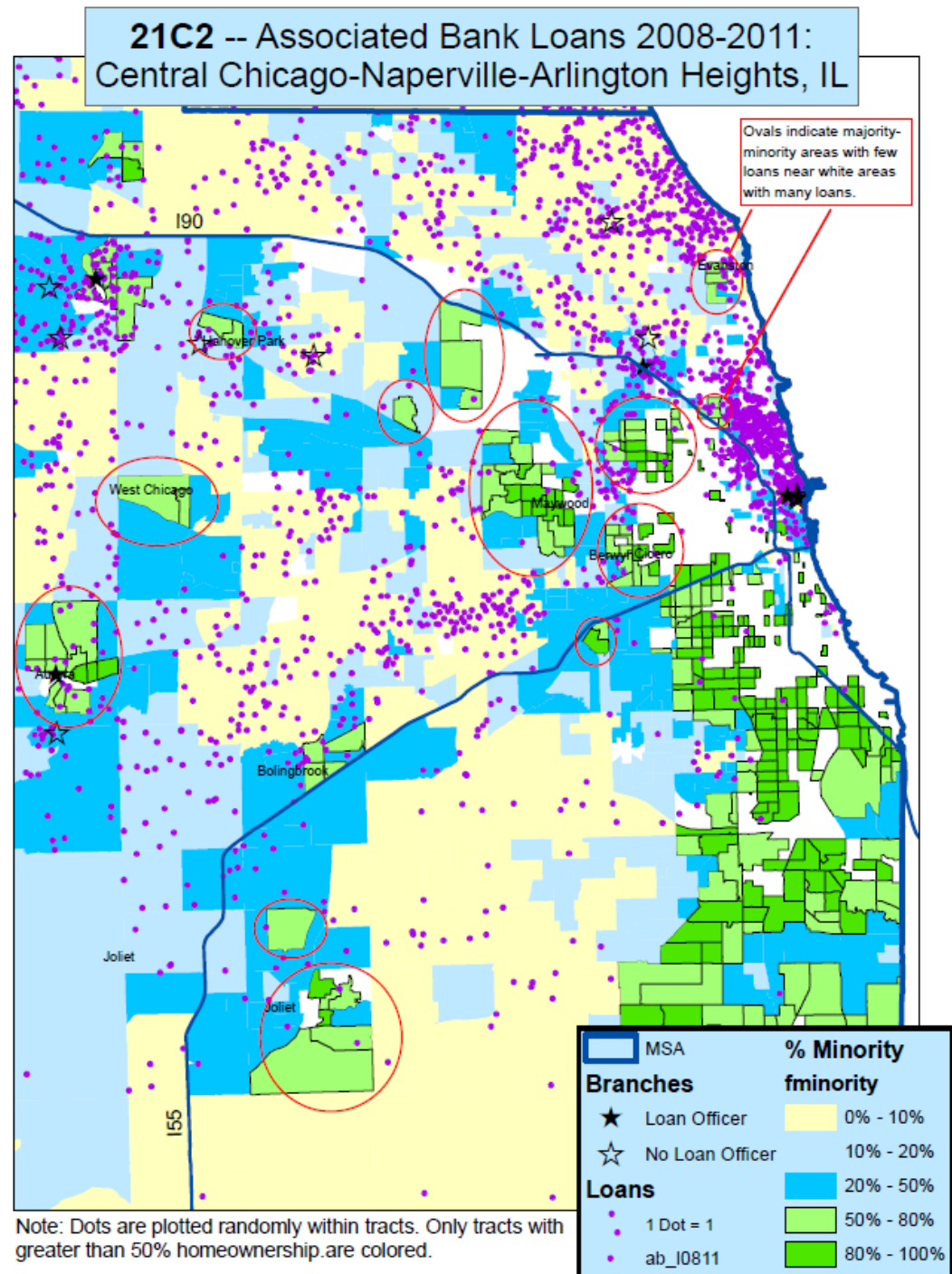
Minority Population in Tract (%)	Associated Loans	All Lenders Loans	Associated Market Share	Associated Share as a % of < 10% Tracts
Less than 10%	6,479	147,053	4.4%	100%
10 - 50%	905	29,600	3.1% ***	69%
50% or more	198	8,954	2.2% ***	50%

Source: 2008-2011 HMDA data, 2005-2009 ACS data from Table 1A.

Note: * = statistically significant at the 10% level; ** = 5%; *** = 1%.

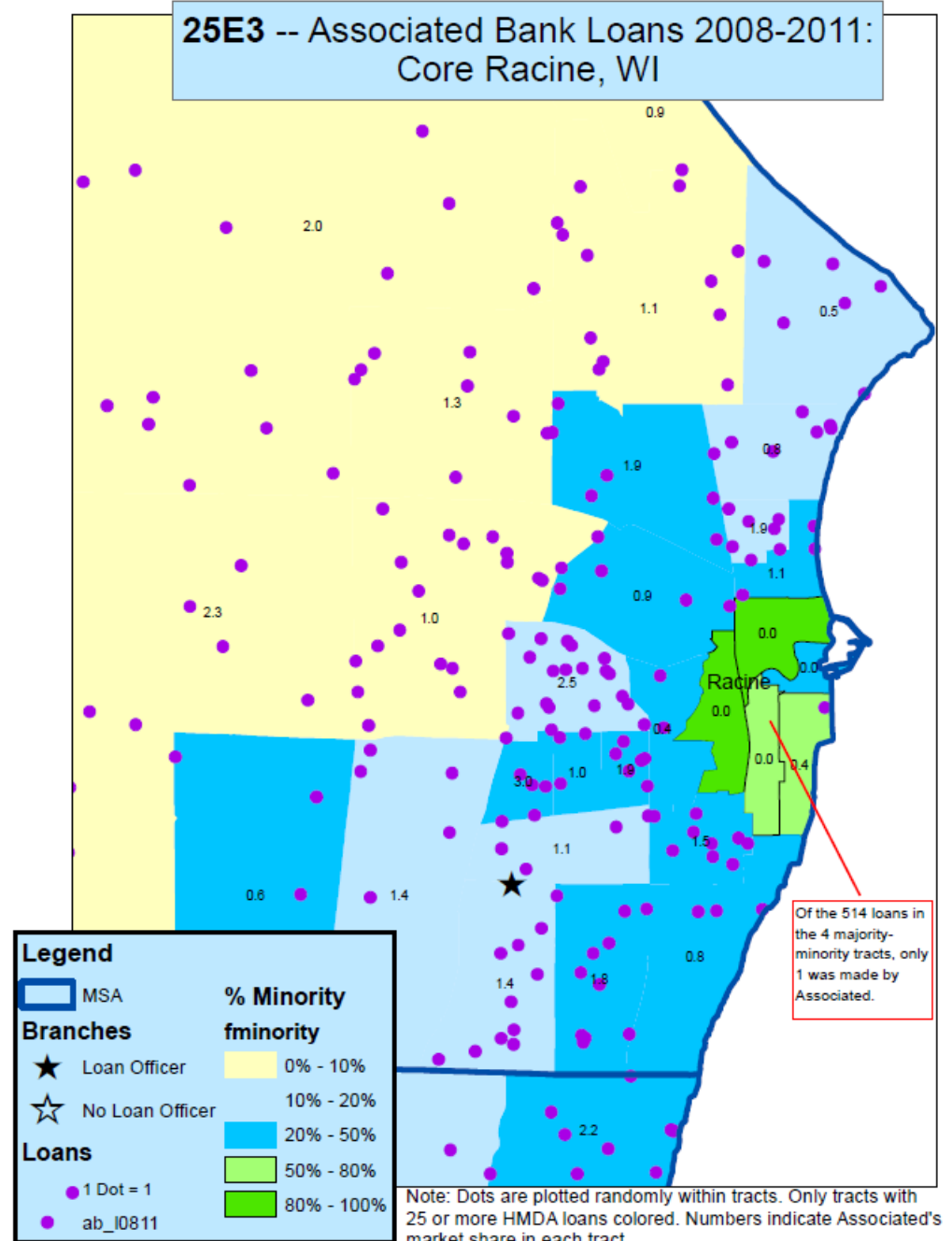
Associated Bank Case

- If other lenders write mortgages in a particular neighborhood, they clearly find the demand sufficient and the risk tolerable, so why doesn't Associated write mortgages there?
- All tracts shown have majority homeownership, an indicator of demand for home loans.



Associated Bank Case

- A “donut” pattern in Racine: Associated made many loans everywhere except the majority-minority neighborhoods.
- 514 mortgages were made in the majority-minority neighborhoods, only 1 was made by Associated.





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